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WORKING SESSION MEMORANDUM

DATE: February 6, 2015

TO: Alderman Marcia T. Johnson, Chairman
Members of the Zoning and Planning Committee

FROM: James Freas, Acting Director of Planning and Development
Alexandra Ananth, Chief Planner for Current Planning

RE: Accessory Apartment Subcommittee

MEETING DATE: February 9, 2015

CC: Board of Aldermen
Planning and Development Board
Donnalyn Kahn, City Solicitor
John Lojek, Commissioner of Inspectional Services



EXECUTIVE SUMMARY

Attached is a draft of proposed revisions to Sec. 6.7.1. Accessory Apartments, from the Accessory Apartment Subcommittee and the Planning and Development Department. Notable changes include a new definitions section, the replacement of the term RAAP with Administrative Review, and a general cleaning up and simplification of language where it appears to make sense.

ATTACHMENT A: Proposed Sec. 6.7.1. Accessory Apartments

Attachment A

Sec. 6.6. Open Space Uses

6.6.1. Agriculture, ~~Horticulture, Floriculture or Viticulture~~

- A. Defined. Includes horticulture, silviculture, floriculture and viticulture.

6.6.2. Indoor Recreation Facility

- A. Defined. Indoor swimming pools, indoor tennis courts, or similar indoor recreational activities.

6.6.3. Outdoor Recreational Activities, Private Active or Passive

- A. Defined. Includes, but is not limited to, golf courses, boating, play areas, nature studies and walks.

6.6.4. Resource Extraction

- A. Defined. The removal of resources such as sod, loam, subsoil, sand or gravel from the premises for the purpose of sale.
- B. Standards. Resource extraction requires a special permit.

6.6.5. Riding School, Stock Farm

- A. Defined. [reserved]

Sec. 6.7. Accessory Uses

6.7.1. Accessory Apartments

A. Accessory Apartment Defined

1. Internal. An accessory apartment located within a ~~single-family~~ dwelling unit and the owner of the ~~single-family~~ dwelling unit occupies either the main dwelling unit or the accessory apartment associated with the main dwelling unit;
2. Detached. An accessory apartment not located within a single-family dwelling unit but in a separate detached accessory structure, and the owner of the single-family dwelling unit occupies either the main dwelling unit or the detached accessory apartment.

B. Rules for All Accessory Apartments

1. No accessory apartment shall be held in separate ownership from the principal structure/ dwelling unit; and
2. The ~~single-family~~ dwelling unit must have been ~~was~~ constructed 10 or more years prior to the date of application for permit to construct an accessory apartment under this Sec. 6.7.1., as evidenced by a certificate of occupancy for the original construction of the dwelling, or, where no such certificate is available, provided that there is other evidence of lawful occupancy of the existing ~~structure dwelling~~ on or before a date at least 10 years prior to the date of application.
3. The property owner of any accessory apartment shall record with the Registry of Deeds for the Southern District of Middlesex County a certified copy of the Board Order or a determination from the Commissioner of Inspectional Services granting the accessory apartment and certified copies shall be filed with the Department of Inspectional Services, where a master list of accessory apartments shall be kept, and with the Assessing Department.
4. When ownership of the property changes, the new owner shall notify the Commissioner of Inspectional Services, at which time the Commissioner of Inspectional Services shall conduct a determination of compliance with the

Board order, ~~this Chapter the Newton Zoning Ordinance~~ and the State Building Code.

5. The owner of the subject property shall file with the Commissioner of Inspectional Services an affidavit attesting to the continued residence of the owner on the subject property. Such affidavit shall be filed annually from the date of the issuance of the certificate of occupancy.

C. Accessory Apartments Allowed By Administrative Review

1. **Standards.** An accessory apartment is allowed by administrative review as a use accessory to an owner-occupied single-family ~~detached~~ dwelling in accordance with the procedures for administrative site plan review, and subject to the dimensional standards for the district as noted in Sec. 6.7.1.F, provided that:
 - a. The accessory apartment shall be a minimum of 250 square feet and a maximum of 1,000 square feet or 33% of the total building size in the dwelling structure, whichever is less;*
 - b. Exterior alterations required to meet applicable Building, Fire or Health Codes are permitted as listed here:
 - i. Doors;
 - ii. Windows;
 - iii. No more than two exterior landings which may be covered, which do not exceed 50 square feet in area, and are not within the setback area;*
 - iv. Stairs which are not within the setback;* and
 - v. Roof and wall venting;
 - c. Additions and exterior alterations to the structure made within 4 years prior to application may not be applied towards meeting the requirements of Table ~~30-8~~;* Sec. 6.7.1.F,*
 - d. No more than one accessory apartment shall be allowed per lot;

- e. There shall be no lodgers in either the original dwelling unit or the accessory apartment;
- f. Parking as required by Sec. 5.1., and screening in the area between the parking space required for the accessory unit and the nearest side lot line sufficient to minimize the visual impact on abutters, such as evergreen or dense deciduous plantings, walls, fences, or a combination thereof;
- g. ~~The apartment shall comply with all applicable Building, Fire and Health Codes.~~

* Requirements marked with an asterisk may be altered by special permit.

D. Accessory Apartments Allowed by Special Permit

1. **By Special Permit.** The Board of Aldermen may grant a special permit ~~in accordance with the procedure in section 30-24~~ for an accessory apartment as a use accessory to an owner-occupied single-family dwelling in a Single Residence district, or a ~~legal~~ nonconforming two-family dwelling in a Single Residence district, or a dwelling in a Multi-Residence district, or a detached structure, provided that the provisions of ~~Sec. 6-3-4~~ Sec. 6.7.1.F are met, except as amended below. ~~Any special permit issued by the Board for such use shall be automatically subject to the condition that the two dwellings may not be held in separate ownership.~~
 - a. The accessory apartment shall be a minimum of 250 square feet and a maximum of 1,200 square feet, or 33% of the total building size ~~of in~~ the dwelling ~~structure~~, whichever is more;
 - b. Exterior alterations required to meet applicable Building, Fire or Health codes are permitted provided they are if in keeping with the architectural integrity of the structure and the residential character of the neighborhood.
 - c. Prospective additions or exterior alterations for the purpose of satisfying the gross floor area requirements for the creation of a

proposed accessory apartment in an owner-occupied single-family dwelling or a ~~legal~~ nonconforming two-family dwelling which is altered, reconstructed or redesigned for the purpose in whole or in part of satisfying the gross floor area requirements for the creation of a proposed accessory apartment may be allowed, but shall not exceed 250 square feet in area or 25% of the final gross floor area of ~~said the~~ accessory apartment as provided in this Sec. 6.7.1., whichever is greater.

- d. No additions or exterior alterations beyond those in the final grant of a petition may be proposed to enlarge the accessory apartment within 2 years of receipt of a special permit hereunder this subsection from the board of aldermen.

E. Accessory Apartment Overlay Districts

1. **District Boundaries.** The following land is placed in an Accessory Apartment Overlay District as specified:
 - a. Single Residence 1 zoned land in real estate section 63 is placed in Overlay District A.
 - b. Single Residence 2 zoned land in real estate section 32 is placed in Overlay District B.
 - c. Single Residence 3 zoned land in real estate section 71 is placed in Overlay District C.
 - d. Single Residence 1 zoned land in real estate section 61 is placed in Overlay District D.

F. Lot Size and Building Size

Detached Accessory Apartment	Lot Size (Min SF)	Building Size (Max SF)
SR 1		
Admin. Rev.	25,000	4,400
Special Permit	15,000*	3,200
SR 2		
Admin. Rev.	15,000	3,100
Special Permit	10,000*	2,600
SR 3		
Admin. Rev.	10,000	2,500
Special Permit	7,000*	1,800
Nonconforming two-family dwelling in SR1, SR2, SR3		
Special Permit	25,000*	2,600
MR 1, MR 2		
Special Permit	8,000	2,600
Overlay A		
Admin. Rev.	43,500	4,400
Special Permit	15,000*	3,200
Overlay B		
Admin. Rev.	16,000	3,600
Special Permit	10,000*	2,600
Overlay C		
Admin. Rev.	10,000	3,100
Special Permit	7,000*	1,800
Overlay D		
Admin. Rev.	30,000	4,000
Special Permit	15,000*	3,200

* If constructed on lot created prior to 12/7/1953

G. Building Size

In determining the building size with regard to accessory apartments, the building size shall be determined as follows:

1. Gross floor area on ground floor, upper floors, finished attic and living area in basement used for living, sleeping, eating or cooking purposes, including closets and hallways, as determined by the assessing department unless otherwise indicated on floor plans prepared by a registered professional architect;
2. Existing unfinished space in basements and attics which would be finished for use as an

accessory apartment shall be considered in the building size;

3. Existing space on porches shall not be included except as follows: If the accessory apartment is to be located in space previously used for a porch, the building size shall include that in the primary dwelling structure plus that space to used for the accessory apartment on the porch;
4. Existing space in attached or detached garages shall not be included except as follows: if the accessory apartment is to be located in a detached structure, the building size shall include that in the primary dwelling structure plus that space to be used for the accessory apartment in the detached structure;
5. Floor space in an attic, if used to meet minimum building size or apartment size, must meet State Building Code requirements for floor to ceiling height as specified in Section 2101.6.

H. Pre-Existing Units. ~~Notwithstanding the terms of Sec. 30-8(d)(1)-(3) above, A pre-existing~~ accessory apartment ~~(second dwelling unit)~~ in a ~~single-family~~ dwelling unit or detached accessory structure shall be considered a lawful use and shall not be required to meet the dimensional standards criteria above of Table 30-8 provided the following criteria are fulfilled:

1. **Proof of Existence.** An owner-occupant seeking validation of an existing accessory apartment unit as described herein shall have the burden of proof to demonstrate by a preponderance of evidence the existence of said dwelling unit as of December 31, 1979 and ongoing from that date forward by submission of probative documentary evidence to the Commissioner of Inspectional Services. Records including, but not limited to the following, may be submitted:
 - a. A valid building alteration permit for the premises indicating the construction of the aforesaid second dwelling unit; or
 - b. Assessing Department records for the premises indicating the existence of the **aforesaid** second dwelling unit; or
 - c. Records of Internal Revenue Service tax returns for the owners of the premises including Form 1040 and Form 1040 Schedule E indicating items such as reported rental income, deductions for

improvements to real estate, reported losses on rental income, and casualty losses, all related to the aforesaid second dwelling unit; or

- d. Permits from the Department of Inspectional Services, other than the actual building alteration permit which provided for construction of the **aforesaid** dwelling unit, such as other building permits, plumbing, electrical and gas fitting permits, which explicitly indicate the existence of the **aforesaid** second dwelling unit; or
- e. Sworn affidavits by former or present tenants of the **aforesaid** second dwelling unit, or a previous or present owner-occupant of the premises, providing a sworn, notarized attestation as to the existence of the said unit; or
- f. Any other documentary evidence which is material and relevant and demonstrates the existence of said the second dwelling unit as of December 31, 1979 and forward.

2. Standard of Proof.

- a. Conflicting Evidence. If the documentary evidence available is conflicting, the Commissioner of Inspectional Services shall determine after weighing all the evidence if the existence of the dwelling unit as of December 31, 1979 and forward from that date is supported by a preponderance of evidence.
- b. If no Department of Inspectional Services records or Assessing Department records are available for a given premises, then sworn, notarized affidavits as provided above ~~in section 30-8(d)(4)a)v~~ shall be presumed to be reliable, unless there is substantial evidence to the contrary.

3. **Requirements.** The requirements of Sec. 6.7.1-A., G., C.1.a), b), c), d), f), and g) E., D., H., G. and H. must be satisfied.